HABEAS CORPUS PROCEEDINGS

REPORT OF THE
VIRGINIA ADVISORY LEGISLATIVE COUNCIL
To
THE GOVERNOR
And
THE GENERAL ASSEMBLY OF VIRGINIA

COMMONWEALTH OF VIRGINIA
Department of Purchases and Supply
Richmond
1967

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HABEAS CORPUS PROCEEDINGS

REPORT OF THE
VIRGINIA ADVISORY LEGISLATIVE COUNCIL

Richmond, Virginia, July 28, 1967.

TO: HONORABLE MILLS E. GODWIN, JR., GOVERNOR OF VIRGINIA

THE GENERAL ASSEMBLY OF VIRGINIA

There has been a sharp growth in the number of habeas corpus petitions filed in recent years in the State and federal courts of Virginia. Statistics reported by the Attorney General vividly illustrate this trend: in 1962, 85 habeas corpus cases were pending in the Attorney General's Office and handled by one assistant attorney general; in 1966, more than 600 cases were pending and required the attention of four assistant attorneys general.

The increase in the number of these cases warrants a close examination of our habeas corpus procedures to determine whether these petitions can be processed more effectively so that the burden on the courts and the bar occasioned by these petitions is alleviated and at the same time the petitioner's rights are adequately safeguarded.

The problems inherent in processing this rapidly increasing number of petitions prompted the Governor of Virginia to request the Virginia Advisory Legislative Council to investigate the subject of habeas corpus procedures. A copy of the Governor's letter to the Chairman of the Council follows:

COMMONWEALTH OF VIRGINIA
GOVERNOR'S OFFICE
RICHMOND

April 20, 1966.

The Honorable Tom Frost
Chairman
Virginia Advisory Legislative Council
Warrenton, Virginia

Dear Mr. Frost:

The volume of habeas corpus litigation has increased enormously in recent years as the result of certain decisions of the Supreme Court of the United States and other factors. The large number of cases now pending in the courts of Virginia is such that the problem, in my judgment, merits careful study.

I therefore request that the Virginia Advisory Legislative Council look into this situation and report to the 1968 General Assembly with particular attention to the problems created by the increase in such cases, the need for a post-conviction statute permitting a prisoner to attack any sentence previously imposed on him,

the need for a special court to handle post-conviction proceedings handled by Commonwealth's Attorneys in the state courts, the feasibility of establishing a public defender's office to represent indigent prisoners in post-conviction proceedings, and such related matters as the Council may deem proper.

/s/ Mills E. Godwin, Jr.

CC: Secretary of VALC

The Council selected William F. Stone, Martinsville, member of the Senate and of the Council, to serve as Chairman of the Committee to make the initial study and report to it. The following were chosen to serve with Senator Stone on this Committee: E. Almer Ames, Jr., member of the Senate, Onancock; Richard T. Edwards, Judge, Hustings Court, Roanoke; Alex M. Harman, Jr., Judge, Circuit Court, Pulaski; Reno S. Harp, III, Assistant Attorney General, Richmond; William J. Hassan, Commonwealth's Attorney, Arlington; W. Moscoe Huntley, Judge, Hustings Court, Richmond; Robert R. Huntley, Washington and Lee University, Lexington; J. Sloan Kuykendall, Attorney, Winchester; Albert L. Philpott, member of the House of Delegates, Bassett; J. Lewis Rawls, Jr., member of the House of Delegates, Suffolk; Luther W. White, III, Attorney, Norfolk; Wm. Earle White, Attorney, Petersburg and Henry T. Wickham, Attorney, Richmond.

Mr. Philpott was elected Vice-Chairman of the Committee. G. M. Lapsley and Mary R. Spain served as Secretary and Recording Secretary, respectively, to the Committee.

The Committee initially reviewed the State's habeas corpus procedures and invited all interested parties to a fully publicized open hearing in Richmond. After considering suggestions brought forward at the hearing and further study, the Committee prepared and submitted its report to the Council.

We have reviewed the report of the Committee and now present the recommendations of the Council accompanied by background findings and reasons in support of our proposals. Legislative proposals are included in the Appendix.

RECOMMENDATIONS

These recommendations are listed, not in the order of any priority assigned to them, but in the chronological order of their impact on habeas corpus proceedings beginning with the original trial of the prisoner, continuing through the time at which he would file his petition, and covering actual habeas corpus jurisdiction and hearing procedures.

1. At the trial level, the court should ask the defendant, at the time of imposition of sentence, questions to cover the matters which presently generally serve as the basis for habeas corpus petitions.

2. The record in every trial, which results in a sentence of five years or longer being imposed and ordered served, should be transcribed and held available for use by the defendant, the court or the State, as needed.

3. An official reporter should be assigned to the court to report or record and transcribe the record of criminal cases and to assist the court in preparing a full record, including findings of fact and conclusions of law, in both trial and habeas corpus proceedings.

4. A standard form should be prescribed for the use of prisoners filing habeas corpus petitions in the State courts.

5. Legal assistance should be offered to petitioners at the earliest possible stage to assist them in preparing such standard form and in determining proper allegations; this might be accomplished under the auspices of the State's law schools by enlisting the services of qualified law students, their work being reviewed by legal aid personnel of local bar associations.

6. Prisoners should be permitted to file habeas corpus petitions, not only to challenge the legality of detention under a sentence currently being served, but also to challenge on the basis of a sentence which has been suspended or is to be served following the current sentence.

7. The jurisdiction to hear habeas corpus proceedings now vested in courts of the locales of petitioners' detention should be eliminated.

8. While habeas corpus petitions should be heard in the locale of the original criminal trial, such hearings should be permitted to be scheduled in any court designated within the circuit or corporation of the original trial.

9. The law should be clarified to leave no doubt that a full evidentiary hearing on a habeas corpus petition is unnecessary where no question is raised in the petition that is not answered in the record of the criminal proceedings being challenged.

10. The court reviewing the habeas corpus petition should in all instances add its findings of fact and conclusions of law to the record of proceedings.

11. In those instances in which the petitioner challenges the adequacy of counsel, the petitioner should be deemed to waive the lawyer-client privilege to the extent necessary to permit a full and fair hearing on such allegation.

12. The law should be explicit that the petitioner must raise all allegations of facts known to him at the time he files his petition.

BACKGROUND FINDINGS

Several factors can be seen as contributing to the large increase in the number of habeas corpus petitions being processed in Virginia each year. Recent decisions which have expanded the scope of the allegations which may be raised in post-conviction proceedings to include questions of competency of counsel, legality of search and seizure and admissibility of evidence obtained through search and seizure, and matters concerning confessions, have unquestionably accounted for a substantial number of the growing total of petitions filed each year. The widespread and continuous publicity given both to these decisions and to the use of habeas corpus has also added, without doubt, a good number of petitions to this total. The presence and availability of practiced "writ writers" in the prison system also encourages the filing of petitions.

Virginia's increase in the number of such petitions, which can be traced to the factors just outlined, has not been a unique development. Equal numbers of petitions are being processed in such other states as North Carolina with between 750 and 1,000 current and pending petitions annually and West Virginia with approximately 730 current and pending petitions annually.

While the number of petitions has grown substantially, the proportion of petitions which have merit and result in the granting of a new trial has not grown as quickly, leading to the conclusion that many of these petitions lack substance and are being prepared without adequate counsel and advice.

The end result of the combination of broadened grounds for petitions and a high proportion of frivolous petitions has been to impose on the courts, both State and federal, and on the bar a time-consuming and frustrating burden. It is the purpose of the recommendations offered above, as will be set forth more extensively in the reasoning to follow, to provide the means for reviewing and considering these petitions in a more orderly and efficient manner. It is not the purpose of any of the recommendations to deny any prisoner the right to petition for habeas corpus relief. Nor is it the purpose of any recommendation to shift from the State's courts to the federal courts the work of handling such petitions. It is our feeling that the State courts are most qualified to review and consider these petitions and to resolve the allegations raised in them. We do not consider it to the advantage of Virginia to refuse to handle any aspect of its criminal process, including post-conviction relief. It is our thought that the result of adopting the recommendations proposed here will be a smoother processing at the State court level and a final saving in time and effort both in the State courts and in the federal courts without any loss to those prisoners who validly seek post-conviction review.

REASONS FOR RECOMMENDATIONS

1. At the trial level, the court should ask the defendant, at the time of imposition of sentence, questions to cover the matters which presently generally serve as the basis for habeas corpus petitions.

As an Appendix to this Report, we attach a sample form of questions used in one trial court when accepting a guilty plea. It covers such matters as the defendant's understanding of the indictment, the guilty plea, his right to a jury trial and matters relating to effective representation in such areas as the advice given the defendant by counsel on his right to a jury trial, possible sentences and possible defenses of insanity.

We urge all trial courts to utilize this or a similar form and include the asking and answering of such questions in the trial court record as one means to preserve and clarify the subject matter of possible future habeas corpus petition allegations.

The use of this form is widespread now through many courts in Virginia and has been recommended through the Judicial Conference in the past. While we do not seek legislation to make the use of such a form mandatory, we urge as strongly as possible the inclusion of this type of question and answer information in the records of the trial court.

2. The record in every trial, which results in a sentence of five years or longer being imposed and ordered served, should be transcribed and held available for use by the defendant, the court or the State, as needed.

It is our recommendation that, in any case in which this long a sentence is imposed and ordered to be served, the record should be transcribed immediately upon the conclusion of the trial and be held available by the court for the use of the defendant, itself or the State as future legal proceedings may develop.

Our current law already provides that a verbatim record of all felony proceedings must be kept. The uniform and immediate transcribing of such records will promote an efficient handling of these more serious cases, and it is our conviction that the vast majority of records in such cases will be used either as part of the appeal process or in the challenge to imprisonment through habeas corpus proceedings.

By immediately transcribing the record, not only will accuracy be increased, but time will be saved the State, prisoner and attorney for the prisoner in waiting for a transcript. Time now is frequently lost while the parties involved in habeas corpus proceedings either await the transcript or when they proceed to schedule hearings on the assumption that the record will not cover the allegations of the petition.

Insofar as possible, we wish to achieve a complete and available record of these criminal proceedings to clarify and simplify habeas corpus cases.

3. An official reporter should be assigned to the court to report or record and transcribe the record of criminal cases and to assist the court in preparing a full record, including findings of fact and conclusions of law, in both trial and habeas corpus proceedings.

Because of the last preceding recommendation and the requirement that records be transcribed in the cases outlined and because of later recommendations which involve the inclusion in all records of habeas corpus proceedings of findings of fact and conclusions of law by the court, we believe it is practical and necessary to provide for an official court reporter to be responsible to the court and to assist it in these matters.

The development of a complete record of a criminal case and of all post-conviction procedures is the key means to facilitate the processing of habeas corpus petitions. It represents the soundest means to protect the defendant and preserve a clear record of his treatment at the trial level. It also presents the surest means to determine at what point any allegations have been previously answered. For example, many petitions filed today raise points which are, in fact, clearly answered in the record of the trial which is being challenged. Many petitions filed also raise points fully considered by a court in an earlier post-conviction proceeding. Complete records will permit determination of such points without repetitive evidentiary hearings.

Clerical help is an underlying need to permit such records to be developed to the extent we recommend.

4. A standard form should be prescribed for the use of prisoners filing habeas corpus petitions in the State courts.

The most frequently urged recommendation submitted to the Committee was one for the use of a standard form for the filing of habeas corpus petitions. Standard forms are in use now in the federal courts. The Commonwealth of Pennsylvania and other states as well have utilized a form to assist the petitioner in filing his allegations and to simplify the task of the courts in processing such petitions.

We are recommending legislation to require that any habeas corpus petition be filed on a standard form supplied by the Attorney General's Office on request of any prisoner. The content of the form is set forth in the legislation.

We believe strongly that the use of the form will be a substantial contribution to the fair and smooth processing of such petitions and will assist both the petitioner and those involved in trying and resolving the questions raised. In addition, the form can serve to notify the prisoner that the granting of a writ will not necessarily result in his release but may gain him no more than a new trial; also that perjury penalties apply to false statements in his petition.

5. Legal assistance should be offered to petitioners at the earliest possible stage to assist them in preparing such standard form and in determining proper allegations; this might be accomplished under the auspices of the State's law schools by enlisting the services of qualified law students, their work being reviewed by legal aid personnel of local bar associations.

Closely connected to the use of a standard form is the immediate suggestion for the furnishing of legal assistance to petitioners. The form recommended in the legislation attached requires a full statement of the petitioner's court history as well as a description of the grounds for his petition. It is our thought that legal assistance should be offered to the petitioner, who may avail himself of this rather than the usual services offered by the practicing "writ writers" of the prison system, in preparing and reviewing the petition for habeas corpus.

Law schools in the State have been approached to determine their interest in such a program and we have concluded that it is both feasible and desirable to work out such a system for providing legal aid to prisoners.

At the time the prisoner submits his request for a standard form for a petition, the Attorney General's Office should notify him when returning the standard form that legal assistance is available through the State's law schools. At that point the petitioner can request assistance in the preparation of the form from the law school nearest his place of detention. The services of qualified law students would be made available at this point and until the petition is actually filed whereupon practicing attorneys qualified before the bar would take over the actual handling of the petition through motion and hearing stages.

The expenses of the students in traveling to interview the petitioner would, we believe, be a well-spent and minor investment in the savings of time and effort on the part of attorneys and the court in handling petitions, since such petitions should be more clearly drafted and more reflective of the record of the proceedings to be submitted in support thereof. Such expenses could be provided for by an appropriation to the proper State agency.

6. Prisoners should be permitted to file habeas corpus petitions, not only to challenge the legality of detention under a sentence currently being served, but also to challenge on the basis of a sentence which has been suspended or is to be served following the current sentence.

Prisoners can now, under Virginia law, challenge only the proceedings leading to the sentence they are serving at the time of the filing. Since in many cases a prisoner may be sentenced to serve two terms consecutively and since the second sentence to be served may affect the parole eligibility of the prisoner, it is our recommendation that he be permitted to challenge such a subsequent sentence through habeas corpus. Similarly,

where a sentence has been suspended and yet may affect parole considerations, proceedings leading to the suspended sentence should be susceptible to challenge.

This is the rule being followed in the Fourth Circuit Court at the present time and is one area in which Virginia law differs from federal law. This is one instance where federal court petitions constitute a remedy not available through State court processes.

We believe that both the logic of permitting the challenge in view of parole practicalities and the basic desirability of maintaining complete State court criminal processes speak for the adoption of legislation appended to carry out this recommendation.

7. The jurisdiction to hear habeas corpus proceedings now vested in courts of the locales of petitioners' detention should be eliminated.

Under current law, the prisoner has the right to file in either the locale of his detention or in the court of original criminal jurisdiction. In practice, most of these cases are referred to the local court which has access to the record and to witnesses involved in the criminal trial. We see no reason to continue jurisdiction in the locale of detention in these matters and to tie up the time of two courts and lawyers in two areas when the end result is most often a final hearing in the trial court jurisdiction.

We are, therefore, recommending the amendment of § 8-596 to eliminate alternate jurisdiction in the locale of detention.

8. While habeas corpus petitions should be heard in the locale of the original criminal trial, such hearings should be permitted to be scheduled in any court within the circuit or corporation of the original trial.

Since the witnesses and records can easily be made available within any locality that is in the circuit or the corporation where the original trial took place, we recommend a slight broadening of venue to permit a more feasible scheduling of habeas corpus proceedings. At the present time one judge who may act as circuit court judge for several local jurisdictions must arrange a complicated schedule of habeas corpus petitions tied to the actual specific locality of the original trial. This recommendation will permit such judges to schedule a group of hearings in one of the localities within a corporation or circuit. This measure should afford some relief not only to the courts but to the Attorney General's Office as well in the handling of travel and scheduling complications arising from habeas corpus petitions.

9. The law should be clarified to leave no doubt that a full evidentiary hearing on a habeas corpus petition is unnecessary where no question is raised in the petition that is not answered in the record of the criminal proceedings being challenged.

There was considerable discussion before the Committee concerning the question whether habeas corpus petitions may be denied without a full evidentiary hearing. It is our belief that this question should be definitely clarified through amendment to the habeas corpus statutes.

Since 1964 and the amendment to our laws which requires a verbatim record of all criminal proceedings at the felony level, there is available to the court reviewing such proceedings on a habeas corpus petition a complete record of the trial. In addition under our recommendations this record will have been transcribed close to the time of trial and be held

available for the petitioner's, the court's and the State's use at the time of any habeas corpus proceeding. Where the petitioner presents no grounds to challenge his detention which raise questions of fact unanswered by the record, we do not believe there is any need or reason to involve the State in a full evidentiary hearing on the petition. For example, should the petition allege that counsel failed to act for the petitioner in the course of the trial when the record demonstrates the counsel was active in prosecuting the defense, the judge can rule on the basis of the record before him that the petitioner has not raised an allegation sufficient to warrant a full evidentiary hearing or to warrant the issuance of the writ of habeas corpus. So long as the judge states, for the record, his findings of fact and conclusions of law on this point, there is no loss to either the prisoner nor to the State in the denial of the full evidentiary hearing. The allegations raised will have been fully answered and a record of the habeas corpus level proceeding will be available to both the petitioner and the State should any additional habeas corpus petitions be filed by that prisoner.

10. The court reviewing the habeas corpus petition should in all instances add its findings of fact and conclusions of law to the record of proceedings.

We have just outlined one reason for requiring the court to add its findings of fact and conclusions of law to the record of the habeas corpus proceeding. In those instances where a full evidentiary hearing is denied, such a statement in the record is necessary both to demonstrate that there is no need for the hearing and to inform the petitioner of the action taken on his petition.

However, going beyond this one instance, in all habeas corpus proceedings, whether the petition is denied on the record without hearing or whether a hearing is held, findings of fact and conclusions of law are of extreme value when the petitioner files a subsequent petition which may overlap and raise allegations already covered in an earlier proceeding. This type of record, which includes the work done by the previous court, is of value in both State proceedings where prisoners may bring numerous subsequent petitions and in the federal courts in case this approach is tried. Given a full statement of State court action including that at the habeas corpus level, the federal courts can deny the petition on the basis of the record and without an additional review and hearing.

11. In those instances in which the petitioner challenges the adequacy of counsel, the petitioner should be deemed to waive the lawyer-client privilege to the extent necessary to permit a full and fair hearing on such allegation.

One of the most frequently used allegations in habeas corpus petitions currently being filed is the challenge based on inadequacy of counsel. In hearings concerning such petitions, the petitioner may bring into question the competence of his counsel and allege both nonfeasance and misfeasance on his part. When such questions are at issue, we believe it should be clearly stated in the law that the petitioner waives his right to assert that communications between himself and his counsel are privileged insofar as such communications are pertinent to allegations of incompetency.

The attorney should be free to speak to defend his record in proceedings and to defend his professional reputation.

12. The law should be explicit that the petitioner must raise all allegations of facts known to him at the time he files his petition.

We believe that the petitioner should be called upon to raise all his allegations in a single petition. Insofar as he might not know of his rights at the time any petition is filed, of course, he should not be precluded from filing a subsequent petition to raise such rights. However, he should not be permitted to bring several successive petitions on issues known at the time of filing an initial petition simply to obtain several vacations from the penitentiary. This rule, since it is based on the knowledge of the petitioner at the time of filing, will be invoked only when the Commonwealth can demonstrate that the petitioner had knowledge of the poetential allegation. We believe it should be made a part of our statutory law however to discourage the saving of allegations for numerous petitions.

The advantage of the present situation to the petitioner lies only in his ability to interrupt incarceration through several hearings. The disadvantage to the Commonwealth is far greater and involves the time and expense of processing numerous petitions with several sets of lawyers and hearings as well as travel expenses for both the prisoner and the Attorney General's Office.

POST-CONVICTION HEARING ACT

By strengthening and streamlining our existing statutes, we believe we can achieve effective, fair post-conviction relief for prisoners through the remedy of habeas corpus. In fact, so long as the prisoner can raise such issues as adequacy of counsel on habeas corpus in Virginia, we have, with the addition of a standard form and full record requirements, with habeas corpus a post-conviction remedy comparable to those states which have added formal post-conviction hearing acts to their statutes.

CONCLUSION

We believe the recommendations explained above amount to a practical and sound approach to the problems involved in the handling of the growing number of habeas corpus petitions. By processing these petitions more smoothly and by developing a full and available record of all phases of the criminal and habeas corpus proceedings, we hope to evolve an orderly and fair procedure for affording post-conviction relief to all prisoners having meritorious grounds for seeking a new trial.

To the members of the Committee, we express our appreciation for the time, care and effort given by them to the study of this area and preparation of their report. We wish also to thank the individuals, officials and organizations who so ably assisted the Committee in its endeavors.

Respectfully submitted,

TOM FROST, Chairman
CHARLES R. FENWICK, Vice-Chairman
C. W. CLEATON
JOHN WARREN COOKE
JOHN H. DANIEL
J. D. HAGOOD
CHARLES K. HUTCHENS
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APPENDIX

This Appendix contains the following:

For Recommendation 1, the sample question form.

For Recommendations 2 through 4 and 6 through 12, suggested legislation.

Recommendation 1

GUIDE FOR QUESTIONS WHEN ACCEPTING GUILTY PLEAS

Age:

Schooling:

Read or write:

Understands English language:

Have you received and read a copy of the indictment?

Have you discussed matter of plea with your attorney, Mr. .....?

Do you understand that you are entitled to a speedy jury trial?

That your Attorney, Mr. ....., is willing to give you a defense as warranted by the facts and law?

Ask counsel if he is willing to give defense.

What does it mean when you plead guilty and what remains to be done *in your case*?

Do you understand that in the event you plead guilty that the only thing that remains to be done is to pass sentence and that includes a sentence of years to the *State Penitentiary*?

Have you been induced by any threats, promises or offers of reward to plead guilty?

Advise defendant of the maximum sentence.

Are you in good health mentally and physically? Have you been or are you now subjected to any accident or illness or any nervous upset?

Are you under any kind of medication or drugs?

Inquire of counsel if he has informed defendant of his rights to a jury trial.

Ask defendant if he agrees with statement of counsel and does he feel and believe that his attorney has done all that can reasonably be done in his, the defendant's, behalf.

The Court will not permit anyone to plead "guilty" who claims to be innocent.

Do you declare freely and voluntarily and of your own free will and with full understanding that you desire to withdraw your plea of not guilty and to enter a plea of guilty?

Are you pleading guilty for any reason other than the fact that you are guilty of the crime charged?

Recommendation 2

A BILL to amend and reenact § 17-30.1, as amended, of the Code of Virginia, relating to recording and transcripts of proceedings in certain cases and the costs thereof.

Be it enacted by the General Assembly of Virginia:

1. That § 17-30.1, as amended, of the Code of Virginia be amended and reenacted as follows:

§ 17-30.1. Recording evidence and incidents of trial in certain cases and cost thereof; cost of transcripts.—*(a)* In all civil cases involving an amount in excess of three hundred dollars, the court or judge trying the case may by order entered of record provide for the recording verbatim of the evidence and incidents of trial either by a court reporter or by mechanical or electronic devices approved by the court. The expense of reporting and recording the trial of a civil case shall be paid by the litigants in the manner and in the proportion as the court may in its discretion direct. A transcript of the record, when required by any party, shall be paid for by such party; provided, that the court on appeal may provide that such cost may, in civil cases, be reimbursed to the party prevailing. The failure to secure the services of a reporter, or the failure to have the case reported or recorded for any other reason, shall not affect the proceeding or trial.

In all felony cases, the court or judge trying the case shall by order entered of record provide for the recording verbatim of the evidence and incidents of trial either by a court reporter or by mechanical or electronic devices approved by the court, and the expense of reporting or recording the trial of criminal cases shall be paid by the Commonwealth out of the appropriation for criminal charges, upon approval of the trial judge, but the Commonwealth shall be entitled to receive from the defendant, if convicted, the per diem charges of the reporter or reasonable charge attributable to the cost of operating such mechanical or electronic devices, which charges shall be taxed as a part of the costs of the case. Provided, however, in all felony cases where it appears to the court from the affidavit of the defendant and other evidence that the defendant intends to seek an appeal and is financially unable to pay such costs or to bear the expense of a copy of the transcript of the evidence for an appeal, the trial court shall, upon the motion of counsel for the defendant, order the evidence transcribed for such appeal and all costs therefor paid by the Commonwealth out of the appropriation for criminal charges. If the conviction is not reversed, all costs paid by the Commonwealth, under the provisions hereof, shall be assessed against the defendant.

The administration of this *sub*section shall be under the direction of the Supreme Court of Appeals of Virginia.

(b) In any felony case wherein a sentence of imprisonment for five years or longer is imposed and ordered to be served, the court shall order three copies of a transcript of the record to be prepared and to be held available by the court for use by the court, the defendant so sentenced or the Commonwealth. The costs of such transcript shall be paid by the Commonwealth out of the appropriation for criminal charges.

Recommendation 3

A BILL to amend the Code of Virginia by adding a section numbered 17-30.1:1, to provide for a court reporter in certain courts.

Be it enacted by the General Assembly of Virginia:

1. That the Code of Virginia be amended by adding a section numbered 17-30.1:1, as follows:

§ 17-30.1:1. Each judge of a court of record having jurisdiction over criminal proceedings shall be authorized to appoint a court reporter to report proceedings or to operate mechanical or electrical devices for recording proceedings, to transcribe the report or record of such proceedings, to perform any stenographic work related to such report, record or transcript, and to perform stenographic work relating to habeas corpus proceedings within such court's jurisdiction, including work pertinent to the court's findings of fact and conclusions of law pertinent thereto. Such reporter shall be paid by the Commonwealth on a per diem or work basis as appropriate out of the appropriation for criminal charges.

Recommendation 4

A BILL to amend the Code of Virginia by adding a section numbered 8-596.1, relating to the form and contents of certain petitions for writs of habeas corpus.

Be it enacted by the General Assembly of Virginia:

1. That the Code of Virginia be amended by adding a section numbered 8-596.1, as follows:

§ 8-596.1. (a) Every petition filed by a prisoner seeking a writ of habeas corpus must be filed on the form set forth in subsection (b) hereof. The failure to use such form and to comply substantially with such form shall entitle the court to which such petition is directed to return such petition to the prisoner pending the use of and substantial compliance with such form. Any false statement of a material fact in such form shall be a ground for prosecution and conviction of perjury under § 18.1-273.

(b) Every petition filed by a prisoner seeking a writ of habeas corpus shall be filed on a form to be approved and provided by the Office of the Attorney General, the contents of which shall be substantially as follows:

IN THE ..... COURT

..... Full name and prison number (if any) of Petitioner -vs- .... Name and Title of Respondent	Case No..... (To be supplied by the Clerk of the Court)

PETITION FOR WRIT OF HABEAS CORPUS

Instructions—Read Carefully

In order for this petition to receive consideration by the Court, it must be legibly handwritten or typewritten, signed by the petitioner and verified (notarized). It must set forth in concise form the answers to each applicable question. If necessary, petitioner may finish his answer to a particular question on an additional page. Petitioner must make it clear to which question any such continued answer refers. The petitioner may also submit exhibits.

Since every petition for habeas corpus must be sworn to under oath, any false statement of a material fact therein may serve as the basis of prosecution and conviction for perjury under §18.1-273. Petitioners should, therefore, exercise care to assure that all answers are true and correct.

When the petition is completed, the original and two *copies* (total of three) should be mailed to the Clerk of the Court. The petitioner shall keep one copy.

NOTICE

The granting of a writ of habeas corpus does not entitle the petitioner to dismissal of the charges for conviction of which he is being detained, but may gain him no more than a new trial.

.....

Place of detention: .....

A. Criminal Trial

1. Name and location of court which imposed the sentence from which you seek relief:

.....

.....

2. The offense or offenses for which sentence was imposed (include indictment number or numbers if known):

a. .....

b. .....

c. .....

3. The date upon which sentence was imposed and the terms of the sentence:

a. .....

b. .....

c. .....

4. Check which plea you made and whether trial was by jury:

Plea of guilty: .....; Plea of not guilty: .....;

Trial by Jury: .....; Trial by judge without jury: .....

5. The name and address of each attorney, if any, who represented you at your criminal trial:

.....

.....

6. Did you appeal the conviction? .....

7. If you answered "yes" to 6, state:

the result and the date in your appeal or petition for certiorari:

a. .....

b. .....

citations of the appellate court opinions or orders:

a. .....

b. .....

8. List the name and address of each attorney, if any, who represented you on your appeal:

.....

.....

B. Habeas Corpus

9. Before this petition did you file with respect to this conviction any other petition for habeas corpus in either a State or federal court? ....

.....

10. If you answered "yes" to 9, list with respect to each petition:

the name and location of the court in which each was filed:

a. .....

b. .....

the disposition and the date:

a. .....

b. .....

the name and address of each attorney, if any, who represented you on your habeas corpus:

a. .....

b. .....

11. Did you appeal from the disposition of your petition for habeas corpus? .....

12. If you answered "yes" to 11, state:

the result and the date of each petition:

a. .....

b. .....

citations of court opinions or orders on your habeas corpus petition:

a. .....

b. .....

the name and address of each attorney, if any, who represented you on appeal of your habeas corpus:

a. .....

b. .....

C. Other Petitions, Motions or Applications

13. List all other petitions, motions or applications filed with any court following a final order of conviction and not set out in A or B. Include the nature of the motion, the name and location of the court, the result, the date, and citations to opinions or orders. Give the name and address of each attorney, if any, who represented you.

a. .....

b. .....

c. .....

D. Present Petition

14. State the grounds which make your detention unlawful, including the facts on which you intend to rely:

a. .....

b. .....

c. .....

15. List each ground set forth in 14, which has been presented in any other proceeding:

a. .....

b. .....

c. .....

List the proceedings in which each ground was raised:

a. .....

b. .....

c. .....

16. If any ground set forth in 14 has not been presented to a court, list each ground and the reason why it was not:

a. .....

b. .....

c. .....

.....
Signature of Petitioner

.....
Address of Petitioner

STATE OF VIRGINIA
CITY/COUNTY OF .....

The above named petitioner being first duly sworn, says:

1. He signed the foregoing petition;
2. The facts stated in the petition are true to the best of his information and belief.

.....
Signature of Petitioner

Subscribed and sworn to before me
this ..... day of ....., 19.....

.....
Notary Public

My commission expires .....

The petition will not be filed without payment of court costs unless the petitioner is entitled to proceed in forma pauperis and has executed the attached.

FORMA PAUPERIS AFFIDAVIT

STATE OF VIRGINIA
CITY/COUNTY OF .....

The petitioner being duly sworn, says:

1. He is unable to pay the costs of this action or give security therefor;

   His assets amount to a total of $.....

.....
Signature of Petitioner

Subscribed and sworn to before me

this ..... day of ....., 19.....

.....
Notary Public

My commission expires .....

Recommendations 6 through 12

A BILL to amend and reenact § 8-596, as amended, of the Code of Virginia, relating to writs of habeas corpus, their granting and contents.

Be it enacted by the General Assembly of Virginia:

1. That § 8-596, as amended, of the Code of Virginia be amended and reenacted as follows:

§ 8-596. When and by whom the writ granted; what petition to contain.—*(a)* The writ of habeas corpus ad subjiciendum shall be granted forthwith by any circuit court or corporation court, or any judge of either in vacation, to any person who shall apply for the same by petition, showing by affidavits or other evidence probable cause to believe that he is detained without lawful authority.

***

(b) (1) With respect to any such petition filed by a petitioner held under criminal process, and subject to the provisions of § 17-97 of the Code of Virginia, only the court or any judge thereof in vacation which entered the original judgment order of conviction or convictions complained of in the petition shall have authority to issue writs of habeas corpus, and hearings on such petition may be held at any court within the circuit or corporation of such original trial court as designated by the judge thereof.

(2) Such petition shall contain all allegations the facts of which are known to petitioner at the time of filing and such petition shall enumerate any and all previous applications of like nature and their disposition. No writ shall be granted on the basis of any allegation the facts of which petitioner had knowledge at the time of filing any previous petition.

(3) Such petition may allege detention without lawful authority through challenge to a conviction, although the sentence imposed for such conviction is suspended or is to be served subsequently to the sentence currently being served by petitioner.

(4) In the event the allegations of illegality of the petitioner's detention can be fully determined on the basis of recorded matters, the court or judge thereof in vacation may make its determination whether such writ should issue on the basis of the record.

(5) Such court or judge shall give his findings of fact and conclusions of law following his determination on the record or after hearing, to be made a part of the record and transcribed.

(6) If petitioner alleges as a ground for illegality of his detention the inadequacy of counsel, he shall be deemed to waive his privilege with respect to communications between such counsel and himself to the extent necessary to permit a full and fair hearing for the alleged ground.